

SUPREME COURT – STATE OF NEW YORK
COUNTY OF NEW YORK

T.D. and R.D.,

Plaintiffs,

-against-

THE ROCKEFELLER UNIVERSITY,

Defendant.

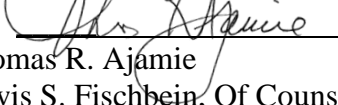
*Index No.:**Date Filed:***SUMMONS****Child Victims Act Proceeding 22 NYCRR
202.72****To the above-named Defendant:**

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the plaintiffs' attorneys within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

Venue is proper because (a) defendant is a domestic corporation authorized to transact business in New York with its principal office located in New York, New York, and (b) New York is the county in which a substantial part of the events or omissions giving rise to these claims occurred.

Dated: New York, New York
October 10, 2019

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SUPREME COURT – STATE OF NEW YORK
NEW YORK COUNTY

T.D. and R.D.,

Plaintiffs,

-against-

THE ROCKEFELLER UNIVERSITY,

Defendant.

*Index No.:**Date Filed:***COMPLAINT****Child Victims Act Proceeding 22 NYCRR
202.72**

Plaintiffs, by and through their attorneys, Ajamie LLP, respectfully allege for their complaint the following:

I. INTRODUCTION

1. This is a revival action brought under the New York Child Victims Act (“CVA”), CPLR 214-g and 22 NYCRR 202.72. When Plaintiffs were minors, they were sexually assaulted by Dr. Reginald Archibald (“Archibald”), a well-renowned pediatric endocrinologist and professor at The Rockefeller University and its hospital, Rockefeller University Hospital (collectively, “Rockefeller”). Plaintiffs have recently learned that Archibald likely assaulted hundreds, if not thousands, of his patients during his long career at Rockefeller.

2. In an investigative report released in May 2019, Rockefeller conceded that Archibald sexually assaulted many children at the same time he purported to offer innovative medical care and treatment. Rockefeller admitted that by 1974, it was aware of numerous patient complaints against Archibald. This included a 1960-1961 grand jury investigation, of which Rockefeller’s President was notified, and several additional complaints from 1960 to 1974 to Rockefeller’s Physician-in-Chief by patients, patients’ family members, and staff about Archibald’s unnecessary examinations of children’s genitals and other sexual misconduct.

Rockefeller also had information while Archibald was still practicing that indicated Archibald may have engaged in misconduct and inappropriate and unnecessarily intrusive exams of his some of his patients.

3. Despite receiving repeated complaints and other warning signs, Rockefeller knowingly and recklessly discounted and disregarded abuse, concealed abuse, and chose to protect its reputation, status, and wealth over the children in its custody, care, and control. Rockefeller permitted Archibald unfettered, unsupervised access to children, failed to warn children or their parents, and exposed Plaintiffs to unreasonable risk of danger. With the passage of the CVA, which allows them to file this action, Plaintiffs now seek to hold Rockefeller accountable for its breaches of duty and other actionable misconduct.

II. PROCEEDING IN ACCORDANCE WITH CPLR 214-G AND 22 NYCRR 202.72

4. Plaintiffs bring this Complaint under the Child Victims Act (CVA), CPLR 214-g, and 22 NYCRR 202.72, which opened a one-year, one-time window for victims and survivors of historic childhood sexual abuse in the State of New York to pursue lapsed claims.

III. THE PARTIES

5. Plaintiff T.D. is an adult male who currently resides in Arlington, Virginia. When T.D. was a child, he was a patient of Archibald's at Rockefeller.

6. Plaintiff R.D. is an adult male who currently resides in Dallas, Texas. When R.D. was a child, he was a patient of Archibald's at Rockefeller.

7. While Plaintiffs were minors, they were victims of a criminal sex act in the State of New York. Since this criminal violation is the basis for this action, Plaintiffs are entitled to the protection of the Civil Rights Law 50-b and will file a motion asking this Court for permission to proceed using a pseudonym.

8. In the alternative, Plaintiffs will seek a stipulation from Rockefeller to a protective order which will ensure that their identity is protected from the public while allowing Rockefeller full access to information necessary for its defense.

9. Upon information and belief, defendant Rockefeller, which was formally known as The Rockefeller Institute for Medical Research, is a New York not-for-profit education corporation with its principal place of business in New York, New York.

10. Upon information and belief, at times Rockefeller conducted business as the “Rockefeller Institute,” “Rockefeller University,” or “Rockefeller University Hospital” (collectively, “Rockefeller”).

11. Upon information and belief, at all relevant times, Rockefeller employed Archibald as a professor and physician.

12. To the extent that Rockefeller was or became a corporation on or after January 1, 1940, such entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

13. To the extent Rockefeller is a successor to a different entity, corporation, or organization which existed on or after January 1, 1940, such predecessor entity, corporation, or organization is hereby on notice that it is intended to be a defendant in this lawsuit.

14. All such entities, corporations, and/or organizations are collectively referred to herein as Rockefeller.

IV. JURISDICTION AND VENUE

15. This Court has personal jurisdiction over Rockefeller because it is located in New York. This Court has subject matter jurisdiction over this dispute because the amount in damages Plaintiffs seek are within the jurisdictional limits of this Court.

16. Venue is proper because (a) Rockefeller is a domestic corporation authorized to transact business in New York with its principal office located in New York, New York and (b) New York is the county in which a substantial part of the events or omissions giving rise to these claims occurred.

V. STATEMENT OF FACTS

A. Background on Rockefeller and Archibald

17. Rockefeller is the oldest and one of the most prestigious biomedical research institutions in the country. Throughout its history, it has employed numerous members of the National Academy of Sciences and the National Academy of Medicine, as well as recipients of the Nobel Prize and the Lasker Award for medical research.

18. The Rockefeller University Hospital is a major division of Rockefeller, serving as a center for clinical research for over a century. The hospital does not charge its patients for treatment. Rockefeller, including the hospital, receives funding through government grants, private donors and foundations, royalties from patents, and bond offerings.

19. For approximately 40 years, from the 1940s to the 1980s, Rockefeller employed Archibald as a prominent and esteemed professor and physician, specializing in pediatric endocrinology. During his tenure at Rockefeller, Archibald engaged in a long-running child growth study and provided free medical care to children. Upon information and belief, Archibald examined approximately 9,000 children at Rockefeller.

20. When Archibald retired, Rockefeller bestowed on him the honor of “physician emeritus” and continued his hospital privileges. Archibald died in 2007.

21. Rockefeller has recently admitted that much of Archibald’s “research” was not actual, legitimate scientific inquiry or medical treatment. Instead, Archibald engaged in rampant

and extensive sexual abuse of the child patients entrusted in his care under the guise of childhood growth research. Upon information and belief, Archibald sexually abused hundreds – and possibly thousands – of children.

22. Archibald instructed young patients to undress, insisted that they remain naked throughout the “examinations,” fondled them, pulled and measured their genitals (flaccid and erect), masturbated them, asked them to masturbate themselves while he watched, took semen samples from them, instructed them to perform sex acts, placed some of them on his lap, engaged in sex acts with many of them, and otherwise sexually assaulted and abused his child patients.

23. Using Rockefeller’s equipment, Archibald also took nude photos of nearly all his child patients over many years for no legitimate medical reason. Archibald took sexually explicit images, such as close-ups of boy patients’ flaccid and erect penises. Upon information and belief, employees of Rockefeller knew that Archibald was taking these inappropriate photos.

24. Archibald claimed he was conducting medical research and providing free medical treatment at Rockefeller, but in reality, he engaged in sexually predatory practices. He never explained the sexual and intrusive nature of the “research” or “treatment” or obtained informed consent from his patients.

B. Rockefeller Disregards Archibald’s Rampant Sexual Abuse.

25. Years before the Plaintiffs were abused, Rockefeller’s senior management knew or should have known that Archibald had sexually abused and continued to sexually abuse many of their child patients.

26. In or about 1960, two former patients of Archibald complained to the New York District Attorney about Archibald’s misconduct at Rockefeller. A grand jury issued a subpoena to Rockefeller for the medical records of those two patients and then presented the matter to the grand

jury, but the grand jury did not return an indictment. However, Rockefeller's then-President was familiar with the serious allegations and the criminal investigation.

27. Upon information and belief, despite Rockefeller senior management's knowledge of these serious allegations, Rockefeller took little or no action to investigate Archibald's activities and failed to put in place any measures to protect its child patients.

28. From 1960 to 1974, several patients, family members, and staff members at Rockefeller complained to its Physician-in-Chief about Archibald's examination of their child patient's genitals. Upon information and belief, the Physician-in-Chief viewed Archibald's taking genital measurements as a questionable medical practice. Upon information and belief, Archibald became difficult and less communicative when confronted with these allegations.

29. Upon information and belief, despite the numerous complaints to Rockefeller's Physician-in-Chief, and Archibald's evasive responses to questioning, Rockefeller took little or no action to investigate Archibald's activities and failed to put in place measures to protect its child patients.

30. Upon information and belief, Rockefeller never notified the U.S. Attorney's Office for the Southern District of New York regarding the production and perhaps distribution of child pornography by its agent on its premises.

31. In 2018, Rockefeller retained the law firm of Debevoise & Plimpton LLP ("Debevoise") to investigate Archibald's conduct. Debevoise and Rockefeller spoke with hundreds of Archibald's former patients during the investigation. Rockefeller issued a report in May 2019 detailing Archibald's pattern of abuse and misconduct. Rockefeller also acknowledged in this report the many times it had information about Archibald's widespread abuse but did nothing to stop him.

C. T.D. and R.D. Are Among Archibald's Victims.

32. Plaintiffs T.D. and R.D. are brothers who participated in Archibald's child growth study that he used to lure children so he could sexually abuse them.

33. Plaintiff T.D. visited Archibald three times between approximately 1976 and 1982 for purposes of participating in his child growth study. These visits took place in a basement office at the end of the day when no other patients were visiting. During these visits, Archibald would have him undress, masturbate him, instruct T.D. to masturbate, and take nude photographs of him.

34. Because of Archibald's actions towards him, T.D. sustained personal injury, physical sickness, and emotional distress, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, physical pain and mental anguish, and emotional and psychological damage. Following his visits with Archibald as a child, he acted out at school and became frightened of his family doctor, who was not affiliated with either Archibald or Rockefeller and who was not abusive. At one point, teachers at T.D.'s elementary school suspected he was being abused at home due to his behavior and called his parents in for a conference to discuss his issues. T.D. has had to or will incur medical expenses to treat these injuries.

35. Plaintiff R.D. visited Archibald three times between approximately 1976 and 1982 for purposes of participating in his child growth study. These visits took place in a basement office at the end of the day when no other patients were visiting. During these visits, Archibald would have him undress, masturbate him, instruct R.D. to masturbate, and take nude photographs of him.

36. Because of Archibald's actions towards him, R.D. sustained personal injury, physical sickness, and emotional distress, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, physical pain

and mental anguish, and emotional and psychological damage. Following his visits with Archibald as a child, he acted out at school and became frightened of his family doctor, who was not affiliated with either Archibald or Rockefeller and who was not abusive. R.D. has had to or will incur medical expenses to treat these injuries.

37. Debevoise contacted T.D. and R.D. in September 2018 as part of its investigation into Archibald on behalf of Rockefeller. The investigation forced T.D. and R.D. to re-visit this period of their lives, which caused additional emotional distress. T.D. suffers from psoriatic arthritis, and his condition has worsened during this time period. In January 2019, both T.D. and R.D. moved out of New York state, where they had lived their entire lives, in an attempt to put these events behind them.

38. Upon information and belief, at all relevant times outlined in this complaint, Rockefeller materially benefited from Archibald's services, as well as those who managed and supervised him.

39. Upon information and belief, at all relevant times outlined in this complaint, Archibald acted within scope of his employment with Rockefeller.

40. Upon information and belief, at all relevant times outlined in this complaint, Rockefeller was responsible for the hiring and staffing at and for Rockefeller, including Archibald.

41. Rockefeller represented to Plaintiffs and their parents that Archibald had been properly vetted, that Archibald was safe and trustworthy, and that it was safe for Plaintiffs' parents to entrust Plaintiffs to Archibald for his medical research and treatment.

42. Based on the representations of Rockefeller that Archibald was safe and trustworthy, Plaintiffs and their parents allowed Plaintiffs to be in the care, custody, and control of Archibald, including the times when Plaintiffs were sexually abused by Archibald.

43. Neither Plaintiffs nor their parents would have allowed them to be in the care, custody, or control of Rockefeller or Archibald if Rockefeller had disclosed to Plaintiffs or their parents that Archibald was not safe and was not trustworthy, and that he in fact posed a danger to Plaintiffs in that Archibald was likely to sexually abuse Plaintiffs.

44. Archibald used his position of trust and authority at Rockefeller to sexually abuse and exploit Plaintiffs multiple times using Rockefeller's instrumentalities while Plaintiffs were in the care, custody, or control of Rockefeller on Rockefeller's premises.

45. At all relevant times, Rockefeller, its agents, servants, and employees knew or should have known that Archibald was sexually abusing and exploiting children.

VI. CAUSES OF ACTION

FIRST CAUSE OF ACTION **NEGLIGENCE**

46. Plaintiffs re-allege the paragraphs set forth above and below.

47. Rockefeller knew, or was negligent in failing to discover, that Archibald posed a threat of sexual abuse to children and was in fact sexually abusing children for decades as an employee and agent of Rockefeller.

48. Archibald's acts described in this Complaint were undertaken, and/or enabled by, during the course, and/or within the scope, of Archibald's employment, appointment, assignment, and/or agency with Rockefeller.

49. Rockefeller had care, custody, and control of Plaintiffs while they were on its premises where they saw Dr. Archibald and thus had a duty to protect them from Archibald.

50. Plaintiffs' parents reasonably believed their children would be safe while in Rockefeller's care, custody, and control.

51. During the relevant periods outlined in this complaint, while Plaintiffs were in Rockefeller's care, custody, and control, Archibald sexually abused and exploited Plaintiffs.

52. Rockefeller's actions were negligent, grossly negligent, willful, wanton, malicious, reckless, and/or outrageous in their disregard for the rights and safety of Plaintiffs.

53. Rockefeller's acts and omissions included:

- a. Giving improper orders and/or failing to make proper regulations;
- b. Employing improper persons or instrumentalities in work involving risk of harm to others, including minors;
- c. Failing to adequately supervise Archibald and his activities;
- d. Failing to protect against or warn Plaintiffs and their family of the known risk of abuse by Archibald;
- e. Failing to investigate and/or discover Archibald's conduct, despite having actual and/or constructive notice of it;
- f. Permitted, intentionally failed, and/or neglected to prevent negligent or grossly negligent conduct by Archibald;
- g. Allowed tortious conduct, including the sexual abuse and assault of minors by employees, agents, and/or assigns, to take place on Rockefeller's premises or in other circumstances within Rockefeller's control; and
- h. Allowed the acts and omissions set forth in this Complaint to occur.

54. In breaching these duties, Rockefeller acted willfully and in conscious disregard of any need to protect Plaintiffs from Archibald.

55. It was reasonably foreseeable that Rockefeller's failure to exercise such care as would a parent of ordinary prudence in comparable circumstances would result in sexual abuse or other severe harm to Plaintiffs.

56. As a direct and proximate result of Rockefeller's actions and failures to act, Plaintiffs sustained personal injury, physical sickness, and emotional distress, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, physical pain and mental anguish, and emotional and psychological damage. Upon information and belief, some or all of these injuries are of a permanent and lasting nature. Plaintiffs have had to or will incur medical expenses to treat these injuries.

57. Due to the foregoing acts, Rockefeller is liable to Plaintiffs for compensatory damages, economic damages, and for punitive damages, together with interest and costs.

SECOND AND THIRD CAUSES OF ACTION
INTENTIONAL AND/OR NEGLIGENT INFLECTION OF EMOTIONAL
DISTRESS

58. Plaintiffs re-allege the paragraphs set forth above and below.

59. Rockefeller intentionally, wantonly, willfully, maliciously, and recklessly caused Plaintiffs severe emotional distress.

60. Rockefeller intended to cause or disregarded a substantial probability of causing severe emotional distress in Plaintiffs.

61. Rockefeller unreasonably and negligently endangered Plaintiffs' physical safety through their acts and omissions.

62. Rockefeller's conduct was outrageous, extreme, and extended beyond all bounds of decency to the extent to be regarded as atrocious, and intolerable in a civilized community.

63. As a direct and proximate result of Rockefeller's actions and failures to act, Plaintiffs have suffered and will continue to suffer severe emotional distress, that is, emotional distress that is of such intensity and duration that no reasonable person should be expected to endure it.

64. There is no excuse or justification for Rockefeller's conduct.

65. It was reasonably foreseeable that such conduct would result in the sexual abuse of or other severe harm to Plaintiffs.

66. The outrageous conduct proximately caused Plaintiffs' sexual abuse and exploitation. As a result, Plaintiffs have suffered extreme and permanent emotional distress with physical manifestations, interference with normal development, past and future expenses for medical and psychological treatment, loss of enjoyment of life, and other losses to be described and proven at trial of this matter.

67. By reason of Rockefeller's wrongful acts, Plaintiffs sustained personal injury, physical sickness, and emotional distress, including but not limited to, severe emotional and psychological distress, humiliation, fright, dissociation, anger, depression, anxiety, physical pain and mental anguish, and emotional and psychological damage. Upon information and belief, some or all of these injuries are of a permanent and lasting nature. Plaintiffs have had to or will incur medical expenses to treat these injuries.

68. Due to the foregoing acts, Rockefeller is liable to Plaintiffs for compensatory damages, economic damages, and for punitive damages, together with interest and costs.

VII. NO APPORTIONMENT OF LIABILITY

69. One or more of the exemptions set forth in CPLR 1601 and 1602 applies, which precludes Rockefeller from limiting its liability by apportioning some portion of total liability to any joint tortfeasor.

VIII. PRAYER FOR RELIEF

70. WHEREFORE, Plaintiffs demand judgment against defendant Rockefeller on their causes of action, together with compensatory and punitive damages, interest, costs and disbursements, and such other and further relief as the Court deems just and proper.

Dated: New York, New York
October 10, 2019

Respectfully Submitted,

AJAMIE LLP

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